

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

JOSEPH T. CARDONE
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-264
Case No. 75-11444

S.S.A. No.

AMERICAN TELECOMMUNICATIONS
(NEWARD DIE AND MANUFACTURING COMPANY)
(Employer)

Employer Account No.

Office of Appeals No. NH-19924

The employer appealed from the decision of the Administrative Law Judge which held the claimant was not subject to disqualification under section 1256 of the Unemployment Insurance Code and the employer's reserve account not relieved of benefit charges under section 1032 of the code on the ground that the claimant neither voluntarily left his most recent work without good cause nor had he been discharged for misconduct connected with his most recent work.

STATEMENT OF FACTS

The claimant was last employed for approximately one and one-half years by the Neward Die and Manufacturing Company as quality control manager at a weekly wage of \$380. The claimant resided in Northridge, California, and the employer's establishment was some 65 miles distant from the claimant's home. Because of the distance between the claimant's home and the employer's establishment, the claimant received from his employer an additional payment of \$90 per month to cover transportation costs.

The claimant's employment with the Neward Die and Manufacturing Company was of an indefinite nature and was not covered by a union contract or by any other type of written agreement.

On April 18, 1975, the Neward Die and Manufacturing Company circulated the following notice to its employees:

"April 18, 1975

"TO: All Employees: Molding, Assembly, Quality Control, Shipping & Receiving, and Accounting Departments.

"FROM: Tom Van Etten

"SUBJECT: Notice of Termination from Neward Die & Mfg. Co.

"As you know, our company, Neward Die and Manufacturing Co. will discontinue operating in the custom molding and assembly business effective May 1, 1975.

"All employees of the Neward Die and Mfg. Co. will be terminated effective Wednesday, April 30, 1975. Work will be available for all shifts on that day and all operations will be shut down at 7:30 a.m., Thursday and Friday, May 1st and May 2nd, 1975. Final paychecks including any vacation or sick pay due and including pay for May 1st and May 2nd will be distributed at the end of each shift on Wednesday April 30th.

"We are giving notice as of this date to fulfill the intent of our Company's termination policy with regard to giving notice of termination.

"Beginning today and during the next two week period American Telecommunications Corp. employment applications will be available and may be completed by Neward Die & Mfg. Co. employees who wish to be considered for employment by ATC. If you wish to fill out an application, please do so at your earliest convenience and return your application to your immediate supervisor.

"Representatives of ATC will be at Neward during the next two weeks to review employment applications that are received.

"cc: All managers of Neward Die & Mfg. Co."

On April 18, 1975 the director of Industrial Relations for the new company addressed a letter to the claimant offering him employment effective May 1, 1975, performing the same duties that he had been performing for the Neward Die and Manufacturing Company at the same weekly wage. However, the new employer did not offer the claimant the \$90 per month transportation cost. The claimant decided not to accept the offer of employment.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides for the disqualification of a claimant and sections 1030 and 1032 of the code provide that an employer's reserve account may be relieved of benefit charges if it is found that the claimant voluntarily left his most recent work without good cause or was discharged for misconduct connected with his most recent work.

The question presented for decision in this matter is whether the claimant's employment terminated on April 30, 1975 when the Neward Die and Manufacturing Company ceased operations or whether the claimant's employment terminated when he declined to accept the offer of employment given to him by the successor employer. That is, we must decide whether the claimant was laid off on April 30, 1975 or voluntarily quit his work on May 1, 1975, the effective date of the offer of employment.

In Appeals Board Decision No. P-B-133, the Appeals Board considered a case similar to the one herein. In that case, the claimant's employer sold his business, effective October 20, 1970, and, insofar as that employer was concerned, the claimant's employment was terminated. However, the new employer offered the claimant work performing the same duties she had performed for the former employer and at the same wage. The claimant refused this offer by the new employer. Therein, we stated:

"There are many occasions involving a change of ownership where a work force is taken over en masse. We do not believe that in such cases an advance offer to be retained on the job can be construed as an offer of new

work where the employee simply goes on with his job as before. It is our opinion that an employee given such an opportunity and refusing it voluntarily quits his job, and the only issue remaining would be whether he quit for good cause."

In deciding cases under the Unemployment Insurance Code, we adhere to the principle of stare decisis. However, where experience or better reasoning shows that former decisions of ours have been in error we believe that it is incumbent upon us to overrule or modify those decisions.

Section 2920 of the Labor Code provides:

"2920. Every employment is terminated by any of the following:

- (a) Expiration of its appointed term.
- (b) Extinction of its subject.
- (c) Death of the employer.
- (d) The employee's legal incapacity to act as such."

The California Court of Appeal in Gaspar v. United Milk Producers of California (1944), 144 P. 2d 867, 62 C.A. 2d 546, at 553, said:

"No California case which we have found announces a rule contrary to the rule generally recognized that where an employer puts out of his power the further performance of an employment contract by selling his entire business it operates as a discharge of his employee engaged in such business."

Thus, the verbal contract of employment that the claimant entered into with the Neward Die and Manufacturing Company terminated on April 30, 1975 when the employer ceased business and the claimant was, in effect, laid off. Accordingly, the claimant is not subject to disqualification under section 1256 of the code.

The offer of employment made to the claimant by the successor company was an offer of a new contract of employment. Since the claimant refused to accept this new contract, a question of his eligibility for benefits is raised under section 1257(b) of the code. That section provides that an individual is disqualified for benefits if he, without good cause, refused to accept suitable employment. No determination having been issued under section 1257(b) of the code, this matter is referred to the Department for its consideration. Insofar as Appeals Board Decision No. P-B-133 holds that a claimant who refuses employment with the new owner of the business by which the claimant was employed has voluntarily quit, it is overruled.

DECISION

The decision of the Administrative Law Judge is affirmed. The claimant is not subject to disqualification under section 1256 of the code and the employer's reserve account is not relieved of charges under section 1032 of the code.

Sacramento, California, March 16, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT